Friday.

Submitted

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 264.

THE CITY OF LOUISIANA, PLAINTIFF IN ERROR,

vs.

ELIZABETH W. TAYLOR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED SEPTEMBER 23, 1879.

James O. Broadhead

SUPREME COURT OF THE UNITED STATES.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said circuit court before you, at the September term, 1878, thereof, between Elizabeth W. Taylor, plaintiff, and against the City of Louisiana, defendant, a manifest error hath happened to the great damage of the said defendant, as by its complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this third day of February, in the year of our Lord one thousand eight hundred and seventy-nine.

Issued at office, in the city of St. Louis, with the the seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

[SEAL.] M. M. PRICE,
Clerk Circuit Court United States, Eastern District of Missouri,
By A. P. SELBY, *Deputy.*

Allowed by—

SAMUEL TREAT, *Judge.*

2 *Return to writ.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In obedience to the command of the within writ I herewith transmit to the Supreme Court of the United States a duly-certified transcript of the *the* record and proceedings in the within-entitled case, with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of said circuit court, at office, in the city of St. Louis, this 22d day of May, A. D. 1879.

[SEAL.] M. M. PRICE,
Clerk of said Court,
By A. P. SELBY, *Deputy.*

(Indorsed:) No. . United States circuit court, eastern district of Missouri. Elizabeth W. Taylor vs. City of Louisiana. Writ of error to the circuit court of the United States, eastern district of Missouri. Returned and filed day of , 187 . , clerk.

3 The United States of America to Elizabeth W. Taylor, greeting:

You are hereby cited and admonished to be and appear at a

Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Missouri, wherein the City of Louisiana is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel Treat, judge of the circuit court of the United States for the eastern district of Missouri, this third day of February, in the year of our Lord one thousand eight hundred and seventy-nine.

SAMUEL TREAT,
Judge United States Circuit Court, Eastern District of Missouri.

I waive service of this citation.

ELIZABETH W. TAYLOR,
By T. K. SKINKER, *Her Attorney.*

(Indorsed:) United States circuit court, eastern district of Missouri. Elizabeth W. Taylor vs. City of Louisiana. Citation. Filed , 187 . , clerk.

4 THE UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of the United States for the eastern district of Missouri.

ELIZABETH W. TAYLOR, PLAINTIFF,
vs.
THE CITY OF LOUISIANA, DEFENDANT.

Be it remembered that heretofore, to wit, on the 16th day of March, 1878, there was filed in the above-entitled case, by leave of court, a second amended petition, which is in words and figures following, to wit:

Petition.

In the circuit court of the United States, E. D. M.

ELIZABETH W. TAYLOR, PLAINTIFF,
vs.
THE CITY OF LOUISIANA, DEFENDANT.

The plaintiff states that she is a citizen of the State of Illinois and defendant is a municipal corporation of the State of Missouri; that at the times hereinafter mentioned the Louisiana and Missouri River Railroad Company was a corporation authorized by law to construct and operate a railroad from the City of Louisiana to the Missouri River; that on the 12th day of June, 1866, the city council of said city passed an ordinance whereby it was proposed that a subscription should be made by said city to the capital stock of said company in an amount not exceeding fifty thousand dollars for the purpose of aiding in the construction of said road, said subscription to be paid by the issue of bonds of said city, and it was ordained that an election should be held in said city on the first Tuesday (being the 3rd day) of July, 1866, at which

the said ordinance and proposal should be submitted to the qualified voters of said city; that said election was held and a majority of the votes
5 cast thereat were for said ordinance, proposal, and subscription; that on the 5th day of June, 1867, the said city council passed another ordinance, whereby it authorized the mayor of said city to subscribe the sum of fifty thousand dollars to the capital stock of said company, which subscription was then and there accordingly made; that afterwards, from time to time, bonds of said city to the amount of fifty thousand dollars were issued by said city in payment for the stock so subscribed, and the said city received from said company a certificate for five hundred shares of said stock of the value of one hundred dollars each; that said city has retained and now holds said certificate, and has voted on the same as a stockholder at all elections held by the stockholders of said company; that the railroad of said company has been constructed and completed, and now is, and long has been, operated from said city to the Missouri River; that taxes have been regularly levied and collected by the proper authorities in said city, from the year 1867 down to the year 1876, for payment on the said bonds and the interest thereon; that part of said bonds and all the installments of interest accruing on all of said bonds have been paid except those which have matured since January, 1876.

Plaintiff states further that said bonds are in words and figures following:

UNITED STATES OF AMERICA,

State of Missouri, City of Louisiana.

No.] *Railroad bond.* [$1,000.

Know all men by these presents that the City of Louisiana, in the State of Missouri, is indebted to , or bearer, in the sum of one thousand dollars, lawful money of the United States of America, which the said City of Louisiana promises to pay on the 1st day of January, 1877, at the treasurer's office, in the City of Louisiana, Missouri, with interest thereon at the rate of eight per cent. per annum,
6 payable semi-annually, on the first days of January and July, in each year, upon presentation and surrender of the annexed coupons as they severally become due and payable. This bond is issued by the City of Louisiana under authority of the general assembly of the State of Missouri, entitled "An act incorporating the Louisiana and Missouri River Railroad Company," approved March 10th, 1859; also, an ordinance of the city council of the City of Louisiana, No. 502, passed June 12, 1866.

In witness whereof the City of Louisiana has caused its seal to be hereto affixed, and the same to be signed by the mayor, and countersigned by the clerk of the city council, at the City of Louisiana, Mo., the 1st day of November, in the year of our Lord eighteen hundred and sixty-nine.

{ CITY OF LOUISIANA, MO., } R. C. PEW,
{ SEAL. } *Mayor City of Louisiana, Mo.*

Countersigned—
AUG. COSBY,
Clerk City Council.

Plaintiff states that there are annexed to said bonds coupons for interest in words and figures following:

Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Missouri, wherein the City of Louisiana is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel Treat, judge of the circuit court of the United States for the eastern district of Missouri, this third day of February, in the year of our Lord one thousand eight hundred and seventy-nine.

SAMUEL TREAT,
Judge United States Circuit Court, Eastern District of Missouri.

I waive service of this citation.

ELIZABETH W. TAYLOR,
By T. K. SKINKER, *Her Attorney.*

(Indorsed:) United States circuit court, eastern district of Missouri. Elizabeth W. Taylor vs. City of Louisiana. Citation. Filed , 187 . , clerk.

4 THE UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of the United States for the eastern district of Missouri.

ELIZABETH W. TAYLOR, PLAINTIFF,
vs.
THE CITY OF LOUISIANA, DEFENDANT.

Be it remembered that heretofore, to wit, on the 16th day of March, 1878, there was filed in the above-entitled case, by leave of court, a second amended petition, which is in words and figures following, to wit:

Petition.

In the circuit court of the United States, E. D. M.

ELIZABETH W. TAYLOR, PLAINTIFF,
vs.
THE CITY OF LOUISIANA, DEFENDANT.

The plaintiff states that she is a citizen of the State of Illinois and defendant is a municipal corporation of the State of Missouri; that at the times hereinafter mentioned the Louisiana and Missouri River Railroad Company was a corporation authorized by law to construct and operate a railroad from the City of Louisiana to the Missouri River; that on the 12th day of June, 1866, the city council of said city passed an ordinance whereby it was proposed that a subscription should be made by said city to the capital stock of said company in an amount not exceeding fifty thousand dollars for the purpose of aiding in the construction of said road, said subscription to be paid by the issue of bonds of said city, and it was ordained that an election should be held in said city on the first Tuesday (being the 3rd day) of July, 1866, at which

the said ordinance and proposal should be submitted to the qualified voters of said city; that said election was held and a majority of the votes
5 cast thereat were for said ordinance, proposal, and subscription; that on the 5th day of June, 1867, the said city council passed another ordinance, whereby it authorized the mayor of said city to subscribe the sum of fifty thousand dollars to the capital stock of said company, which subscription was then and there accordingly made; that afterwards, from time to time, bonds of said city to the amount of fifty thousand dollars were issued by said city in payment for the stock so subscribed, and the said city received from said company a certificate for five hundred shares of said stock of the value of one hundred dollars each; that said city has retained and now holds said certificate, and has voted on the same as a stockholder at all elections held by the stockholders of said company; that the railroad of said company has been constructed and completed, and now is, and long has been, operated from said city to the Missouri River; that taxes have been regularly levied and collected by the proper authorities in said city, from the year 1867 down to the year 1876, for payment on the said bonds and the interest thereon; that part of said bonds and all the installments of interest accruing on all of said bonds have been paid except those which have matured since January, 1876.

Plaintiff states further that said bonds are in words and figures following:

UNITED STATES OF AMERICA,

State of Missouri, City of Louisiana.

No.] *Railroad bond.* [$1,000.

Know all men by these presents that the City of Louisiana, in the State of Missouri, is indebted to , or bearer, in the sum of one thousand dollars, lawful money of the United States of America, which the said City of Louisiana promises to pay on the 1st day of January, 1877, at the treasurer's office, in the City of Louisiana, Missouri, with interest thereon at the rate of eight per cent. per annum,
6 payable semi-annually, on the first days of January and July, in each year, upon presentation and surrender of the annexed coupons as they severally become due and payable. This bond is issued by the City of Louisiana under authority of the general assembly of the State of Missouri, entitled "An act incorporating the Louisiana and Missouri River Railroad Company," approved March 10th, 1859; also, an ordinance of the city council of the City of Louisiana, No. 502, passed June 12, 1866.

In witness whereof the City of Louisiana has caused its seal to be hereto affixed, and the same to be signed by the mayor, and countersigned by the clerk of the city council, at the City of Louisiana, Mo., the 1st day of November, in the year of our Lord eighteen hundred and sixty-nine.

{ CITY OF LOUISIANA, MO., } R. C. PEW,
{ SEAL. } *Mayor City of Louisiana, Mo.*

Countersigned—
AUG. COSBY,
Clerk City Council.

Plaintiff states that there are annexed to said bonds coupons for interest in words and figures following:

$40.00.] CITY OF LOUISIANA, MO., *Nov. 1st*, 1869.

Treasurer of the City of Louisiana, pay to the bearer forty dollars, being the interest due on the first day of July, 1876, on railroad bond No. .

R. C. PEW,
Mayor of the City of Louisiana.

Plaintiff states that she is the bearer and owner of one of said bonds in the words and figures above set forth, bearing date September 1st, 1869, for the sum of one thousand dollars, due on the first day of January, 1876, which bond was numbered (18) eighteen; and, also, one of said bonds, described as last aforesaid, dated October 1st, 1869, and due January 1st, 1877, and numbered twenty-one (21); and, also, two of said bonds, described as aforesaid, bearing date November 1st, 1869, and due January 1st, 1877, and numbered respectively twenty-four (24) and twenty-five (25).

Also, two of said bonds, dated November 1st, 1869, and num-
7 bered respectively twenty-six (26) and twenty-seven (27), described as aforesaid, due Jan. 1st, 1878.

Plaintiff states further that she is also the bearer and owner of two of said coupons for interest upon said bond numbered twenty-one (21), each for the sum of forty dollars, one due July 1st, 1876, and one due January 1st, 1877.

And, also, two of said coupons, dated November 1st, 1869, for interest upon bond numbered twenty-four (24), due respectively July 1st, 1876, and January 1st, 1877, each for the sum of forty dollars.

And, also, two of said coupons, dated Nov. 1st, 1869, for interest upon said bond numbered twenty-five (25), each for the sum of forty dollars, and due respectively the 1st day of July, 1876, and on the 1st day of January, 1877.

And, also, four of said coupons, dated November 1st, 1869, for interest on bond numbered twenty-six (26), each for the sum of forty dollars, and due respectively July 1st, 1876, January 1st, 1877, July 1st, 1877, and January 1st, 1878.

And, also, four of said coupons, dated November 1st, 1869, for interest upon bond numbered twenty-seven (27), each for the sum of forty dollars, and due respectively July 1st, 1876, January 1st, 1877, July 1st, 1877, & January, 1878.

And, also, four of said coupons, of same date, each for the same amount, for interest upon bond numbered twenty-nine, and due respectively July 1st, 1876, Jan. 1st, 1877, July 1st, 1877, and January 1st, 1878.

And, also, four of said coupons, of same date, each for the sum of forty dollars, for interest upon bond numbered thirty (30), and due respectively July 1st, 1876, Jan. 1st, 1877, July 1st, 1877, & Jan. 1st, 1878.

And, also, four of said coupons, of same date, each for the sum of forty dollars, for interest upon bond numbered thirty-one (31), and due respectively July 1st, 1876, Jan. 1st, 1877, July 1st, 1877, and Jan. 1st, 1878.

And, also, four of said coupons, of same date, each for the sum of
forty dollars, for interest upon bond numbered thirty-two (32),
8 and due respectively July 1st, 1876, Jan. 1st, 1877, July 1st, 1877, and January 1st, 1878.

And also four of said coupons, of same date, for the sum of forty dollars each, for interest upon bond numbered thirty-three (33), and due

respectively July 1st, 1876; Jan. 1st, 1877; July 1st, 1877, & Jan. 1st, 1878.

And also four of said coupons, each for the sum of forty dollars, of same date, for interest upon bond numbered thirty-four (34), due respectively July 1st, 1876; Jan. 1st, 1877; July 1st, 1877, and Jan'y 1st, 1878.

And also four of said coupons, dated Dec. 1st, 1869, for the sum of forty dollars, for interest upon bond numbered thirty-five (35), due respectively July 1st, 1876; Jan. 1st, 1877; July 1st, 1877, and Jan. 1st, 1878.

And also four of said coupons, dated Dec. 1st, 1869, each for the sum of forty dollars, for interest upon bond numbered thirty-six (36), and due respectively July 1st, 1876; Jan'y 1st, 1877; July 1st, 1877, & Jan. 1st, 1878.

And also four of said coupons, for interest upon bond numbered thirty-eight (38), dated Dec. 1st, 1869, each for the sum of forty dollars, and due respectively July 1st, 1876; Jan. 1st, 1877; July 1st, 1877, and Jan. 1st, 1878.

And also four of said coupons, for interest upon bond numbered thirty-seven (37), dated Dec. 1st, 1869, each for the same amount of forty dollars, and due respectively July 1st, 1876; Jan. 1st, 1877; July 1st, 1877; Jan. 1st, 1878.

And also four of said coupons, each for the sum of forty dollars, dated Jan. 1st, 1870, for interest upon bond numbered forty (40), and due respectively July 1st, 1876; Jan. 1st, 1877; July 1st, 1877, and Jan. 1st, 1878.

And also four of said coupons, each for the sum of forty dollars, dated Jan. 1st, 1870, for interest upon bond numbered forty-one (41), and due respectively July 1st, 1876; Jan. 1st, 1877; July 1st, 1877, and Jan. 1st, 1878.

And also four of said coupons, for interest upon bond numbered forty-two (42), dated Feb. 1st, 1870, each for the sum of forty dollars, and due respectively July 1st, 1876; Jan. 1st, 1877; July 1st, 1877, and Jan. 1st, 1878.

And four of said coupons, dated Feb'y 1st, 1870, for interest upon bond numbered forty-three (43), each for the sum of forty dollars, and due respectively July 1st, 1876; Jan. 1st, 1877; July 1st, 1877, & Jan. 1st, 1878.

9 And also four of said coupons, dated M'ch 1st, 1870, each for the sum of forty dollars, for interest upon bond numbered forty-four (44), and due respectively July 1st, 1876; Jan. 1st, 1877; July 1st, 1877, & Jan. 1st, 1878.

And also four of said coupons, dated M'ch 1st, 1870, for interest upon bond numbered forty-five (45), each for the sum of forty dollars, and due respectively July 1st, 1876; Jan. 1st, 1877; July 1st, 1877, and Jan. 1st, 1878.

And also four of said coupons, dated April 1st, 1870, for interest on bond numbered forty-six (46), each for the sum of forty dollars, and due respectively July 1st, 1876; Jan. 1st, 1877; July 1st, 1877, and Jan, 1st, 1878.

And also four of said coupons, April 1st, 1870, for interest upon bond numbered forty-seven (47), each for the sum of forty dollars, & due respectively July 1st, 1876; Jan. 1st, 1877; July 1st, 1877, & Jan. 1st, 1878.

And also four of said coupons, for interest upon bond numbered forty-eight (48), each for the sum of forty dollars, & due respectively July

1st, 1876; Jan. 1st, 1877; July 1st, 1877, and Jan. 1st, 1878; and dated May 1st, 1870.

And also four of said coupons, for interest upon bond numbered forty-nine (49). each for the sum of forty dollars, and due respectively July 1st, 1876; Jan. 1st, 1877; July 1st, 1877, & Jan. 1st, 1878; dated May 1st, 1870.

And also four of said coupons, dated September 1st, 1869, for interest upon bond numbered nineteen (19), each for the sum of forty dollars, and due July 1st, 1876; Jan. 1st, 1877; July 1st, 1877, & Jan. 1st, 1878.

And also four of said coupons, dated July 1st, 1869, for interest upon bond numbered sixteen (16), each for the sum of forty dollars, and due respectively July 1st, 1876; Jan. 1st, 1877; July 1st, 1877, & Jan. 1st, 1878.

And also four of said coupons, dated July 1st, 1869, four interest upon bond numbered fifteen (15), each for the sum of forty dollars, and due respectively July 1st, 1876; Jan. 1st, 1877; July 1st, 1877, & Jan. 1st, 1878.

And also four of said coupons, dated M'ch 11th, 1869, each for the sum of forty dollars, for interest on bond numbered thirteen (13), due respectively July 1st, 1876; Jan. 1st, 1877; July 1st, 1877, & Jan. 1st, 1878.

And also four of said coupons, dated Feb. 10th, 1869, for interest upon bond numbered eleven (11), each for the sum of forty dollars, due respectively July 1st, 1876; Jan. 1st, 1877; July 1st, 1877, and Jan. 1st, 1878.

And also four of said coupons, dated Feb. 10, 1869, for interest upon bond numbered ten (10), each for the sum of forty dollars, due respectively July 1st, 1876; Jan. 1st, 1877; July 1st, 1877, & Jan. 1st, 1878.

And also four of said coupons, dated Nov. 10th, 1868, for interest upon bond numbered four (4), each for the sum of forty dollars, and due respectively July 1st, 1876; Jan. 1st, 1877 July 1st, 1877, and Jan. 1st, 1878.

And also four of said coupons, dated November 10th, 1868, each for the sum of forty dollars, for interest upon bond numbered three (3), *each for the sum the sum of forty dollars*, due respectively July 1st, 1876; Jan. 1st, 1877; July 1st, 1877, and Jan. 1st, 1878.

Plaintiff states further that all of the aforesaid coupons are for interest due upon the bond issued by the defendant in the manner and for the purposes hereinbefore set forth; said bonds are in the words and figures as the one hereinbefore set forth, except as to date and number; and said bonds were issued by the defendant on the respective dates specified as the date of the aforesaid coupons; that all of said bonds bear interest from maturity at the rate of eight per cent. per annum, and said coupons at the rate of six per cent. per annum.

Plaintiff states further that said subscription of stock and said issue of bonds were authorized by the several acts of the general assembly of the State of Missouri entitled "An act to amend and reduce into one the several acts incorporating the town of Louisiana, and to organize the same into a city, approved March 10th, 1849," approved February 16th, 1865, "An act to incorporate the Louisiana and Missouri River Railroad Company," approved March 10th, 1859, and "An act to amend an act entitled 'An act to incorporate the Louisiana and Missouri River Railroad Company,' by increasing the capital said company, defining more explicitly the power of the board of directors, to fix the west-

ern terminus of said road, authorizing the location and construc-
11 tion of a branch road, and conferring upon said board the necessary powers to carry into effect the several objects contemplated by this charter, and also by striking out sections 11, 18, 27, 30, and 31 of said act," approved March 24th, 1868.

Plaintiff states further that all of said bonds and coupons are unpaid, and that an action has accrued to her against the said defendant for the sum of eleven thousand and two hundred dollars, with interest from the maturity of said bonds at the rate of eight per cent. per annum, and for said coupons at 6 per cent. per annum; for all of which with costs the plaintiff asks for judgment.

T. K. SKINKER,
FISHER & ROWELL,
Att'ys for Plaintiff.

And afterwards, on the 28th day of March, 1878, the defendant filed its answer to said petition, which is in the words and figures as follows:

Answer.

UNITED STATES OF AMERICA,
Eastern District of Missouri:

In the United States circuit court, March term, 1878.

ELIZABETH W. TAYLOR, PLAINTIFF,
vs.
THE CITY OF LOUISIANA, DEFENDANT.

Defendant, for answer to the plaintiff's amended petition, denies each and every allegation therein contained, except that it admits that it received said certificates of stock, but avers that the same was wrongfully issued, and defendant now brings the same into court and offers to surrender it; and for special grounds of defense the defendant says:

1. That the act of the general assembly of the State of Missouri entitled "An act incorporating the Louisiana and Missouri River Rail-
road Company," approved March 10, 1859, recited in the plaint-
12 iff's amended petition, as well as on the face of the bonds referred to in said petition, conferred no authority on the defendant corporation to issue said bonds or coupons, or other negotiable securities.

2. Defendant, for further answer, says that the power conferred in said act of March 10, 1859, on defendant to make a subscription and issue its bonds was (if it ever existed) repealed by an act of the general assembly of the State of Missouri entitled "An act to amend and reduce into one the several acts incorporating the town of Louisiana, and to organize the same into a city, approved March 10, 1849," approved February 16, 1865.

3. Defendant, for further answer, says that heretofore, to wit, on the
day of September, 1877, in the circuit court of the United States for the eastern district of Missouri, the plaintiff, in a petition theretofore filed by her against said defendant, claimed and set forth in said petition that the bonds and coupons therein recited (being the same as in her said amended petition recited) were issued in presence of the authority contained in said act of the general assembly of the State of Missouri entitled "An act incorporating the Louisiana and Missouri Railroad Company," approved March 10th, 1859.

Defendant says that to this petition (being the first and original petition filed in this cause) it interposed a demurrer in words and figures following, to wit:

UNITED STATES OF AMERICA,
Eastern District of Mo.:

In the United States circuit court, Sept. term, 1877.

ELIZABETH TAYLOR, PL'FF,
v.
THE CITY OF LOUISIANA, DEF'T.

Defendant comes and demurs to the plaintiff's petition, and
13 for causes of demurrer assigns the following:

1. The petition does not state facts sufficient to constitute a cause of action.

2. The act of the general assembly of the State of Mo., approved March 10, 1859, incorporating the Louisiana and Missouri River Railroad Company conferred no authority on the defendant corporation to issue the bond sued on and filed as an exhibit in this case.

3. The pretended authority under which the bond sued on is claimed to have been issued was repealed prior to the issuance of said bond by the act of the general assembly of the State of Mo., approved Feb'y 16, 1865, entitled "An act to amend an act entitled 'An act to amend and reduce into one the several acts incorporating the town of Louisiana, and to organize the same into a city, approved March 10, 1849."

WAGNER, DYER & EMMONS,
Att'y of Def't.

Which said demurrer was heard by the said circuit court of the United States at the said September term, 1877, and by the said court in all things sustained; that the plaintiff did not appeal from said decision, and judgment sustaining said demurrer, in that behalf rendered, but the same was, and ever since has been, and is now, a judgment of said court; and so the defendant says that as to the questions presented in said demurrer the same has been adjudicated. Wherefore defendant pleads said adjudication and judgment in bar, so far as the said act of the 10th of March, 1859, is concerned.

4. The defendant, for further answer to the plaintiff's amended petition, says that no authority whatever was conferred on it to issue the bonds and coupons recited in said amended petition by an act of the general assembly of the State of Missouri, entitled "An act to amend an act entitled 'An act to incorporate the Louisiana and Missouri River Railroad Company,'" &c., &c., approved March 24, 1868; that said act was and is unconstitutional and void.

14 5. Defendant, further answering the plaintiff's amended petition, says that the authority (if any there was) conferred on it by the amended charter of defendant, approved Feb'y 16, 1865, to issue bonds was a general power to subscribe for stock in any railroad company connected with defendant, and was abrogated and annulled by the provisions of the constitution of the State of Missouri which went, into effect on the 4th day of July, 1865.

6. Defendant, for further answer, says that, long prior to the making of the alleged subscription by defendant to the capital stock of the Louisiana and Missouri River Railroad Company, and the issuance of the bonds

and coupons in plaintiff's petition named, the general assembly of the State of Missouri passed an act entitled "Of railroad companies," which said act repealed so much of the act of Feb'y 16, 1865, referred to in plaintiff's petition as conferred authority (if such there was) on defendant to issue bonds or take stock in railroad companies. And so defendant says that it had no authority to make a subscription to the capital stock of the Louisiana & Missouri Railroad Company, and issue the bonds and coupons specified in plaintiff's petition. Wherefore it prays judgment.

7. Defendant, for a further answer, says that the said amended charter, approved Feb'y 16, 1865, above referred to in this answer and set out in plaintiff's petition, authorized said defendant to subscribe to the capital stock of a railroad company only on condition that an ordinance making the appropriation or authorizing the issue of bonds for any such purpose be submitted to a vote of the qualified voters of the City of Louisiana, at a general election held in the city, or at any special election expressly ordered, at which election a majority of the votes cast should be for such ordinance. Defendant says that no ordinance of the city council of defendant making an appropriation or au-
15 thorizing the issue of its bonds was ever passed by such council, nor was ever any such ordinance submitted to the qualified voters of said city, nor did any such ordinance receive the assent of a majority of the qualified voters of said city at any general election or special election held for that purpose.

9. Defendant, for a further answer, says the general assembly of the State of Missouri, passed an act, which was approved December 16, 1865, entitled "An act to provide for the registration of voters," which act was in force at and before the pretended election claimed by plaintiff to have been held on the day of July, 1866. Defendant says that no registration of the qualified voters of said city of Louisiana was or had been made prior to the said day of July 1866, and that no legal election was or could be holden without such registration, nor could any person or persons not registered as qualified voters legally vote at any election in said city. Wherefore defendant says that any such act or thing done (if any such there was) looking to an election without such registration was absolutely void and of no effect.

And defendant now says, that for the reasons and causes above set forth it prays judgment.

WAGNER, DYER & EMMONS,
Att'ys for Def't.

And afterwards, on the 30th day of March, 1878, the plaintiff filed reply to the first, second, third, fourth, and seventh, and demurrer to the fifth, sixth, and ninth special pleas of the defendants answer, which reply is in words and figures as follows:

Reply to part of answer.

ELIZABETH W. TAYLOR, PLAINTIFF,
v.
THE CITY OF LOUISIANA, DEFENDANT.

Now comes the plaintiff and replying to the first, second, third, fourth, and seventh special pleas of the answer, denies each and every material allegation in each of the said special pleas.

16 T. K. SKINKER, AND
FISHER & ROWELL,
Att'ys for Plaintiff.

And the said demurrer is in words and figures following, to wit:

Demurrer to part of answer.

ELIZABETH W. TAYLOR, PLAINTIFF,
v.
THE CITY OF LOUISIANA, DEFENDANT.

Now comes the plaintiff and demurs to the fifth, sixth, and ninth special pleas in the defendant's answer set up, and for grounds of demurrer says:

To the fifth special plea: That the amended charter of said city of February 16th, 1865, was not abrogated or annulled by the provisions of the constitution of Missouri which went into effect on the 4th day of July, 1865.

To the sixth special plea: That the act entitled "Of railroad companies," referred to in the plea, did not repeal the 10th section of the amended charter of said city of February 16th, 1865.

To the ninth special plea:

1. That no law in force on the 1st day of July, 1866, required or authorized any registration of the qualified voters to be made on or before that day, or made registration of the qualified voters a condition precedent to voting.

2. That no law in force on that day prohibited the holding of said election on that day.

3. That said election was lawful and regular without any registration of the qualified voters being made.

T. K. SKINKER, AND
FISHER & ROWELL,
Att'ys for Plaintiff.

And at the March term, 1878, of said court, and on the 8th day of April, the following proceedings were had in said case, to wit:

17 ELIZABETH W. TAYLOR, PLAINTIFF,
vs.
CITY OF LOUISIANA, DEFENDANT.

Demurrer sust'd.

Now come the parties, by their attorneys, and the court having considered the demurrer to special defences in amended answer heretofore filed, and being fully advised thereof, orders that said demurrer be, and the same is hereby, sustained.

And afterwards, at the September term, 1878, of said court, and on the 13th day of November, 1878, the following further proceedings were had in said case, to wit:

Submission.

ELIZABETH W. TAYLOR, PLAINTIFF,
vs.
CITY OF LOUISIANA, DEFENDANT.

Now come the parties, by their attorneys, and this case being regularly called for trial, and both parties being ready, the same is now

submitted to the court, without the intervention of a jury, upon the pleadings, proofs, and arguments of counsel, but the court not being fully advised as to what judgment to render in the premises, takes further time to consider thereof.

And afterwards, at an adjourned day of said September , 1878, of said court, held on the 7th day of December, 1878, the following further proceedings were had in said case, to wit:

ELIZABETH W. TAYLOR, PLAINTIFF,
vs.
CITY OF LOUISIANA, DEFENDANT.

Now again come the parties, by their respective attorneys, the plaintiff by Messrs. T. K. Skinker and Fisher and Rowell, and the defendant by Messrs. Wagner, Dyer and Emmons, and this case having been heretofore submitted to the court, without the intervention of a jury, upon the pleadings, proofs, and arguments of counsel, upon consideration whereof, and being now fully advised in the premises, the
18 court finds the issues for the plaintiff, and assesses her damages by reason of the non-payment of the bonds issued by said defendant, and the coupons thereto attached, sued on and described in the petition, in the sum of twelve thousand eight hundred and five dollars and eighty-four cents ($12,805.84)

Judgment.

It is therefore considered by the court that the plaintiff, Elizabeth W. Taylor, have and recover of said defendant, the City of Louisiana, as well the said sum of twelve thousand eight hundred and five dollars and eighty-four cents, the damages aforesaid by the court assessed, as also the costs herein laid out and expended, and have thereof execution.

MEM.—$6,849.33 of this judgment bears 8 % interest per annum, and $5,956.51 bears 6 %.

And thereupon said defendant files its motion for a new trial herein, which being by the court considered, it is ordered that said motion be overruled. And, on motion of its attorneys, leave is granted said defendant to file its bill of exception, as of this date, within sixty days.

And afterwards, in vacation of said court, and on the 3rd day of February, 1879, the following proceedings were had in said case, to wit:

ELIZABETH W. TAYLOR, PLAINTIFF,
vs.
CITY OF LOUISIANA, DEFENDANT.

Bill of exceptions allowed.

Now comes the defendant, by its attorneys, and presents to the Hon. Samuel Treat, judge, its bill of exceptions herein, which is allowed, signed, and ordered to be filed and made part of the record herein.

Writ of error allowed.

And also presents a writ of error to remove this cause to the Supreme Court of the United States, and a citation citing and admonish-

ing the said plaintiff to be and appear at a Supreme Court of the United States, at the next term thereof, on the second Monday of October next, which said writ of error is allowed, and said citation signed
19 by the judge.

Bond approved.

And the said defendant also presents to the court its bond in the penal sum of five hundred dollars, which bond is approved and ordered to be filed.

The said bill of exceptions is in the words and figures following, to wit:

Bill of exceptions.

In the circuit court of the United States for the eastern district of Missouri.

ELIZABETH W. TAYLOR, PL'FF,
vs.
THE CITY OF LOUISIANA, DEF'T.

Be it remembered that on the trial of this cause, at the September term of this court, 1878, the following proceedings were had:

Pl'ff's evidence.

The plaintiff, to sustain the issues on her part, offered in evidence the 10th section of the amended charter of the City of Louisiana, which was approved February 16th, 1865, and which is as follows:

"The city shall have power to subscribe for stock in any incorporated railway company connecting with the City of Louisiana, or give a bonus to any institution of learning, by submitting an ordinance making the appropriation or authorizing the issue of bonds for any such purpose to a vote of the qualified voters of the city, at any general election held in the city, or at any special election expressly ordered, at which election the majority of the votes cast shall be for such ordinance; provided, the debt of the city shall never exceed one hundred and fifty thousand dollars."

Plaintiff also introduced in evidence the charter of the Louisiana and Missouri River Railroad Company, being an act approved March 10th, 1859. (Laws of Mo., 1858–'9, page 400.) Also the amended charter of this company. (Session Acts of 1868, p. 97.)

Plaintiff then offered and read in evidence ordinance No. 502 of the said city defendant, which ordinance is as follows:

20 AN ORDINANCE TO AUTHORIZE SUBSCRIPTIONS TO CERTAIN RAILROADS.

Be it ordained by the city council of the City of Louisiana as follows:

SECTION 1. There shall be an election held at the several places in each ward for the holding of a general election, on the first Tuesday of July, 1866, on the proposition to take stock in the St. Louis & Keokuk Railway Company to an amount not exceeding fifty thousand dollars. Said election to be conducted by the same judges and at the same places as the general election held on the first Monday in March,

1866, and the returns to be made and counted in the same manner, and the result to be certified by the city council in the same manner, as that of any general or special election.

SECTION SECOND. At the same time and place, and under the same judges, an election shall be held on the proposition to subscribe for stock in the Louisiana and Missouri River Railway Company for an amount not exceeding $50,000; the election on the said proposition to be conducted and concluded in all respects as the one provided for in the first section of this ordinance.

SECTION 3. Said election shall be by ballot, and the ballots shall be printed or written thus: "For subscribing $50,000 to the St. Louis & Keokuk Railway Company," or "Against subscribing $50,000 to the St. Louis & Keokuk Railway Company." And the ballots for the Louisiana and Missouri River Railway Company shall be "For subscribing $50,000 to the Louisiana & Missouri River Railway Company," or "Against subscribing $50,000 to the Louisiana & Missouri River Railway Company."

SECTION 4. If, in the counting of the votes and the certificates of the judges of election on the several propositions named in the first and second sections of this ordinance, it shall be found from such certificates that a majority of all the legal votes cast at said election shall be in favor of either of said propositions, then it shall and may
21 be lawful for the mayor to subscribe, in the name of the city, for such stock in each of said roads as shall have received the legal majority aforesaid, and such amount, not exceeding $50,000, as the council shall determine by vote to instruct the mayor, after ascertaining the result of the vote at said election.

SECTION 5. If the election held under the provisions of this ordinance shall be in favor of both the propositions named, then it shall be and may be lawful for the city council to instruct the mayor what amount shall be subscribed to each of said railroads, the aggregate amount of which shall not exceed the whole sum of $100,000, and shall not exceed the amount which the city may legally direct under the present city charter, or such amendments thereto as may hereafter be lawfully enacted.

SECTION 6. After the subscription which may be made to either of said railroad companies, the mayor shall be and he is hereby authorized to provide for the payment of the stock so subscribed, in such installments as shall be demanded by such railway company or companies as their due, by the issue of the bonds of the city, payable at such times as the mayor, or other lawful agent of the city, may authorize, not less than five years nor longer than twenty years, nor at any higher rate of interest than eight per cent. per annum, interest to be payable semi-annually, at the city treasury, or elsewhere in the United States, as the mayor or other agents of the city may contract.

SECTION 7. Provides that for any necessary sum of money to defray incidental expenses they are authorized to pay out a few hundred dollars.

SECTION 8. The bonds of the city to be issued in pursuance of this ordinance shall be in sums of one thousand dollars each and five hundred dollars each, and no bond shall be issued or negotiated
22 under the provisions of this ordinance until the mayor shall be satisfactorily assured the whole amount of the above stock has been subscribed to such road that may be necessary to secure said company in the actual commencement of such railroad.

SECTION 9. It shall be lawful for the mayor, such agent or agents of

the city, to negotiate the sale or delivery of said bonds, as he may deem necessary, by requiring such agent or agents to execute a bond to the city for the faithful performance of his trust, and to pay over all moneys received by him for such bonds, and in such sums as may be approved by the mayor and city council.

SECTION 10. It shall be the duty of the mayor to cause suitable tickets to be distributed to the qualified voters at such election.

SECTION 11. This ordinance to take effect and be in force from and after its passage.

Passed June 12, 1866.

To the introduction and reading of which the defendant at the time objected, because said ordinance was not such an ordinance as the 10th section of the amended charter required, and that it conferred no authority on the city to issue the bonds, and for this reason only; but the court overruled the objection, to which ruling of the court the defendant at the time excepted.

Plaintiff next introduced in evidence the judges' certificates of election, which showed that the question submitted to the voters at the election was, "For a subscription of $50,000 in the Louisiana and Missouri River Railway Company," and "Against subscribing $50,000 in the Louisiana and Missouri River Railway Company," and that there was for subscribing 176 votes, and against subscribing 46 votes.

This certificate was objected to for the same reasons as the ob-
23 jections to the ordinance, and that the issue submitted to the voters was not the issue required by the amended charter; which objections was by the court overruled, and to the overruling of which the defendant at the time excepted.

Plaintiff then offered and read in evidence ordinance No. 526, dated January 8, 1866:

"At the hour of four o'clock of the afternoon of the day next following that of the election the judges shall deliver the ballot-boxes and polls, with the certificate of the four judges, to the clerk of the city council, at his office, and the clerk of the city council shall forthwith proceed, in the presence of the mayor and at least one judge of election of each ward, in counting up the number of votes certified in each poll, and make out a certificate stating the name of the person voted for, the office voted for, and the aggregate number of votes given to each person."

Plaintiff then offered and read in evidence ordinance No. 521, dated January 5th, 1867, which is as follows:

"An ordinance authorizing the mayor to subscribe $50,000 stock to the Louisiana and Missouri River Railroad, by virtue of an act of the legislature chartering the Louisiana and Missouri River Railroad Company, approved on the day of , 1859, and upon authority of city ordinance 502, approved by an election of the people had and held in accordance with said ordinance on day of 186 .

Therefore, be it ordained by the city council of the City of Louisiana as follows:

SECTION 1. The mayor of the city shall be authorized to subscribe $50,000 to the capital stock of the Louisiana and Missouri River Railroad Company, to be paid to the company in the accrued bonds of the city, at par value, bearing interest at the rate of 8% per annum, the interest payable semi-annually, at the city treasury, Louisiana, the

bonds to be made due and payable as follows: Twenty thousand
24 dollars in ten years after date of their issue, fifteen thousand dollars fifteen years after date of their issue, and fifteen thousand dollars in twenty years after date of their issue.

SECTION 2. The bonds thus subscribed shall be signed by the mayor, and attested by the clerk of the city council, and countersigned by the city treasurer. The register shall keep a separate account, at all times, showing the amount of bonds issued to said company.

SECTION 3. The mayor shall deliver the bonds of the city to such officer or agent of the company as may be properly authorized to receive and receipt for them in the name of the company. He shall file receipts for all the bonds so delivered with the clerk of the city council.

SECTION 4. The mayor shall represent the city's interest in any and all things that may be connected with the company, and shall cast the vote of the city in the election of directors and other officers, and procure certificates of stock, and report his action to the city council from time to time whenever required.

SECTION 5. No bonds of the city shall be provided for, unless an ordinance shall be issued, until the city council shall be satisfied that there has been a sufficient amount of stock subscribed to grade, bridge, and tie the road from Louisiana to some point on the North Missouri Road in the bounds of the charter of said company.

SECTION 6. This ordinance shall take effect and be in force from and after its passage.

Passed June 5, 1867.

The reading of which said ordinance was objected to, on the ground that there was no authority to make the subscription and issue the bonds, and for this reason only; but the objection was overruled, to which action of the court the defendant at the time excepted.

25 ROBERT PARK testified on behalf of plaintiff as follows:

Q. What is your name?

A. Robert Park.

Q. What is your business?

A. I am secretary and treasurer of the Louisiana and Missouri Railway Company.

Q. Where is its office now?

A. 214 Chamber of Commerce, in this city.

Q. What is that book?

A. This is the subscription to the capital stock subscribed for the Louisiana & Missouri River Railway Company.

Q. You produced that from the——

A. We found it in our office.

Mr. SKINKER. This is the original subscription-book of the Louisiana & Missouri River Railway Company. We offer it in evidence to show the subscription by the mayor.

(Col. Dyer, for defendant, admits the signature.)

The City of Louisiana, upon the terms of the ordinance No. 502, dated June 5, 1867, W. C. Orr, mayor, five hundred shares, fifty thousand dollars and coupons.

We, the subscribers, for the purpose of aiding in the construction of the Louisiana & Missouri River Railroad, do hereby subscribe and

testimony. I don't see what it has to do with the matter; but if you want to prove it, prove it in a legitimate way.

The COURT. A corporation speaks by its records in matters of this character.

Q. Do you know anything about the city paying taxes and interest upon those bonds?

A. Paying taxes upon the bonds of the city?

Q. Of taxes being collected and interest paid on those bonds?

A. Yes, sir; the interest was paid on them for a time.

Q. Up to when?

A. I cannot give you the date.

The COURT. It is the same as the testimony in the other case, I suppose—up to January, 1876; and then they paid only forty per cent.; January, 1876, forty per cent., and nothing after January, 1876.

Q. Can you give the date?

29 A. I don't know the exact date, but I know it was about that time.

Q. That interest was paid by taxation, I suppose?

A. Yes, sir.

Cross-examination by Col. DYER:

Q. The interest paid by taxation? You don't know whether they sold one bond at 85 cents on the dollar to pay off interest already accumulated on this, together with certain of those bonds that had already been issued? Some of those had been already taken up by that money, had they not?

A. I don't know about that. I know taxes were assessed and collected.

Q. You don't know, in point of fact, whether paid out of money collected of the people or out of money derived from the sale of those bonds, do you?

A. I don't know anything about that.

Q. Both were going on at the same time?

A. Yes, sir.

Re-examination by Mr. SKINKER:

Q. You know taxes were collected for this purpose?

A. Yes, sir.

Mr. SKINKER. We offer those bonds and coupons in evidence.

(It it hereby agreed that one bond and coupon shall be here copied, and that the rest are all the same.)

UNITED STATES OF AMERICA,

No. 18] STATE OF MISSOURI. [$1,000.

City of Louisiana railroad bond.

Interest, eight per cent., payable semi-annually.

Know all men by these presents that the City of Louisiana, in the State of Missouri, is indebted to , or bearer, in the sum of one thousand dollars, lawful money of the United States of America, which the said City of Louisiana promises to pay on the first day of January, 1876, at the treasurer's office, in the City of Louisiana, Mo., with interest thereon at the rate of eight per cent. per annum, payable semi-annually, on the first days of January and July in each year, upon

presentation & surrender of the annexed coupons as they severally become due and payable.

This bond is issued by the City of Louisiana under authority
30 of the general assembly of the State of Missouri, entitled "An act incorporating the Louisiana & Missouri River Railroad Company," approved March 10th, 1859; also an ordinance of the city council of the City of Louisiana, No. 502, passed June 12th, 1866.

In witness whereof the City of Louisiana has caused its seal to be hereto affixed, and the same to be signed by the mayor and countersigned by the clerk of the city council, at City of Louisiana, Mo., the 1st day of Sept., in the year of our Lord eighteen hundred and sixty-nine.

[CORPORATE SEAL.] R. C. PEW,
Mayor City of Louisiana, Mo.

Countersigned:
AUG. OURY,
Clerk City Council.

$40.] CITY OF LOUISIANA, MO., *Sept.* 1, 1869.

Treasurer of the City of Louisiana, pay to bearer forty dollars, being interest due on the first day of July, 1876, for railroad bond No. 19.

R. C. PEW,
Mayor of City of Louisiana.

We also offer the certificate of stock in evidence—500 shares of stock in the railroad company.

We will also offer the resolution of the city council authorizing the mayor to vote this stock, passed in 1877.

Mr. ROWELL. There are several of those resolutions in the books, and we offer those.

(Resolution dated May 1, 1877, authorizing the mayor to represent the city at the coming election of directors of the board.)

Mr. SKINKER. I suppose it is admitted the road was built.

Mr. WAGNER. I don't know whether it makes any difference whether it was or not.

The COURT. Mr. Brown said the bonds were issued as the work was going on.

31 Mr. ROWELL. There are some of those ordinances in the books, that I cannot point to just now, we would like to introduce. The clerk went off last night, and didn't point them out to us.

The COURT. You say the resolution authorizing the mayor to vote the stock?

Mr. ROWELL. Yes, and I have one other ordinance, authorizing the issue of those bonds. Ordinance 544, to regulate the issue of those bonds—an ordinance to regulate the issue of bonds of the City of Louisiana, dated October 13, 1868. It provides it shall be issued and paid in installments, and designates how many years each of said bonds shall become due, in five years, twenty years, &c.

Def't's evidence.

Defendant then offered in evidence the record of the proceedings in this case, on demurrer, at the September term, 1877, in words and figures as follows:

THURSDAY, *September* 20, 1877.

ELIZABETH W. TAYLOR, PLAINTIFF,
vs.
THE CITY OF LOUISIANA, DEFENDANT.

Now come the parties, by their respective attorneys, and the court having examined the questions of law arising upon the demurrer to the petition heretofore filed, is of opinion that the law upon said demurrer is for the defendant. It is therefore ordered that said demurrer be, and the same is hereby, sustained.

The court then found the issues for and gave judgment for the plaintiff; to which finding and judgment the defendant then and there at the time excepted.

And upon the same day the defendant filed its motion for a new trial, which is in words and figures as follows, to wit:

Motion for new trial.

In the circuit court of the United States in and for the eastern district of Missouri.

32 ELIZABETH W. TAYLOR, PL'FF,
vs.
THE CITY OF LOUISIANA, DEF'T.

Now at this day comes the said defendant, and moves the court to set aside the verdict and judgment herein, and grant it a new trial for the following reasons:

1st. The court admitted illegal and improper evidence for the plaintiff, and excluded legal and proper evidence offered by the defendant.

2d. The finding of the court is contrary to the facts.

3d. The finding and judgment is contrary to the law and the evidence.

4th. The finding and judgment is for the plaintiff, when it should have been for the defendant.

WAGNER, DYER & EMMONS,
For Def't.

Which said motion was by the court overruled; to which action of the court in overruling the same the defendant excepted. Defendant therefore prays the court to allow and sign this bill of exceptions, and that the same may be signed and sealed and made a part of the record, which is done this 3rd day of February, A. D. 1879.

SAMUEL TREAT, *Judge.* [SEAL.]

And the said bond so approved as aforesaid is in the words and figures following, to wit:

33 Know all men by these presents that we, the City of Louisiana, as principal, and G. L. Bralley and A. J. McCune, as securities, are held and firmly bound unto Elizabeth W. Taylor in the full and just sum of five hundred dollars, to be paid to the said Elizabeth W. Taylor, her heirs, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this third day of February, in the year of our Lord one thousand eight hundred and seventy-nine.

Whereas lately, at the September term, 1878, of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court, between Elizabeth W. Taylor, plaintiff, and the City of Louisiana, in the State of Missouri, defendant, judgment was rendered against the said defendant, and the said defendant having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Elizabeth W. Taylor citing and admonishing her to be and appear at a Supreme Court of the United States, to be holden at Washington, the second Monday of October next:

Now, the condition of the above obligation is such that if the said City of Louisiana, the defendant, shall prosecute said writ to effect, and answer all damages and costs if it fail to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of—

THE CITY OF LOUISIANA, [CORPORATE SEAL.]
By WILLIAM PARKER, *Mayor*. [SEAL.]
G. L. BRALLEY. [SEAL.]
A. J. McCUNE. [SEAL.]

Approved by—

SAMUEL TREAT.

(Indorsed:) No. . United States circuit court, eastern district of Missouri. vs. . Bond, $. , principal; , sureties. Filed day of , 187 . , clerk.

34 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, M. M. Price, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify that the writing hereto attached to be a true copy of the record and proceedings had in case No. 961, of Elizabeth W. Taylor, plaintiff, against the City of Louisiana, defendant, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in said district, this 22d day of May, in the year of our Lord eighteen hundred and seventy-nine.

[SEAL.]

M. M. PRICE,
Clerk of said Court,
By A. P. SELBY,
Deputy.

(Indorsed:) No. . United States circuit court, eastern district of Missouri, against . Duly certified copy of the in the above-entitled cause.

(Indorsement on cover:) No. 264. The City of Louisiana, in the State of Missouri, plaintiff in error vs. Elizabeth W. Taylor. E. Missouri, C. C. U. S. Filed 23rd September, 1879.

OFFICE SUPREME COURT U.S.
FILED
APR 8 1882
JAMES H. McKENNEY

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1881.—No. 264.

THE CITY OF LOUISIANA, . *Plaintiff in Error,*

vs.

ELIZABETH W. TAYLOR, . *Defendant in Error.*

STATEMENT AND BRIEF FOR PLAINTIFF.

JAMES O. BROADHEAD and
DAVID P. DYER,
Counsel for Plaintiff in Error.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1881.—No. 264.

THE CITY OF LOUISIANA, . *Plaintiff in Error,*

vs.

ELIZABETH W. TAYLOR, . *Defendant in Error.*

STATEMENT.

This is a suit upon certain bonds and interest coupons, purporting to have been issued by the City of Louisiana to pay for a subscription to the stock of the Louisiana and Missouri River Railroad Company.

The following is a copy of one of the bonds:

UNITED STATES OF AMERICA,
STATE OF MISSOURI, CITY OF LOUISIANA. }

No.—— Railroad Bond, $1,000.

Know all men by these presents that the city of Louisiana, in the State of Missouri, is indebted to———— or bearer in the sum of *one thousand* dollars, lawful money of the United States of America, which the said city of

Louisiana promises to pay on the 1st day of January, 1877, at the treasurer's office, in the city of Louisiana, Missouri, with interest thereon at the rate of eight per cent. per annum, payable semi-annually, on the first days of January and July in each year, upon presentation and surrender of the annexed coupons as they severally become due and payable. This bond is issued by the City of Louisiana, under authority of the General Assembly of the State of Missouri, entitled, "An act incorporating the Louisiana & Missouri River Railroad Company, approved March 10th, 1859; also, an ordinance of the City Council of the City of Louisiana, No. 502, passed June 12, 1866."

In witness whereof, the City of Louisiana has caused the same to be signed by the Mayor, and countersigned by the Clerk of the City Council, at the City of Louisiana, Mo., the first day of November, in the year of our Lord eighteen hundred and sixty-nine.

R. C. PEW,
Mayor City of Louisiana, Mo.

[City of Louisiana, Mo. Seal.]

Countersigned by AUG. OURY,
Clerk City Council.

It will be seen from the recitals on the face of the bonds that the authority for their issue, is based upon "An act incorporating the Louisiana and Missouri River Railroad Company," approved March 20, 1859, and of an ordinance of the City Council of Louisiana passed June 12, 1866.

The 29th section of the Charter of the Railroad Company relied upon, reads as follows:

"SEC. 29. It shall be lawful for the County Court of any county in which any part of the route of said railroad may be, to subscribe to the stock of said company; and it may invest its funds in stock of said company, *and issue the*

bonds of such county to raise funds to pay the stock thus subscribed, and to take proper steps to protect the interest and credit of the county. Such County Court may appoint an agent to represent the county, vote for it and receive its dividends; and any city, town or incorporated company *may subscribe to the stock* of said railroad company and appoint an agent to represent its interests, give its vote and receive its dividends, and may take proper steps to guard and protect the interest of said city, town or incorporation."

An examination of this section of the railroad charter will show that it did not authorize the City of Louisiana or any other *city* or *town* to issue bonds in payment of subscription to the stock of the company. It authorizes *counties* to subscribe for stock and to issue bonds therefor, but it withholds from cities and towns the right to issue bonds. It authorizes cities and towns to subscribe for the stock of the railroad company as it does the counties through which the road passes, but it gives to the latter the right to issue bonds which it does not give to the cities or towns.

The original petition in this case was demurred to on the ground that that section of the railroad charter gave no authority to the City of Louisiana to issue the bonds in question.

The demurer was sustained by a full bench composed of Justice Miller, and Judges Dillon and Treat. Thereupon respondent asked and obtained leave to file an amended petition, wherein it is claimed that the City of Louisiana had authority to issue the bonds in question by virtue of its own charter, passed February 16, 1865, the 10th section of which reads as follows:

"The city shall have power to subscribe for stock in any

incorporative railway company connecting with the City of Louisiana, or give any bonus to any institution of learning by submitting an ordinance making the appropriation, or authorizing the issue of bonds for any such purpose to a vote of the qualified voters of the city, at any general election held in the city, or at any special election expressly ordered, at which election the majority of the votes cast shall be for such ordinance; *provided*, the debt of the city shall never exceed one hundred and fifty thousand dollars."

This section of the charter authorized the City of Louisiana to subscribe for stock in *any* incorporated railway company connecting with the city, by submitting an ordinance making the appropriation, or authorizing the issue of bonds for any such purpose, to the qualified voters of the city at any general election held in the city, or expressly ordered, at which election the majority of the votes cast shall be for such ordinance, and it is claimed that in pursuance of this provision of the charter, the city council, on the 12th of June, 1866, passed Ordinance No. 502, as follows:

Be it ordained by the city council of the City of Louisiana as follows:

SECTION 1. There shall be an election held at the several places in each ward for the holding of a general election, on the first Tuesday of July, 1866, on the proposition to take stock in the St. Louis & Keokuk Railway Company to an amount not exceeding fifty thousand dollars. Said election to be conducted by the same judges and at the same places as the general election held on the first Monday in March, 1866, and the returns to be made and counted in the same manner, and the result to be certified by the city council in the same manner as that of any general or special election.

SECTION 2. At the same time and place, and under the same judges, an election shall be held on the proposition to subscribe for stock in the Louisiana and Missouri River Railway Company for an amount not exceeding $50,000; the election on the said proposition to be conducted and concluded in all respects as the one provided for in the first section of this ordinance.

SECTION 3. Said election shall be by ballot, and the ballots shall be printed or written thus: "For subscribing $50,000 to the St. Louis & Keokuk Railway Company," or "Against subscribing $50,000 to the St. Louis & Keokuk Railway Company." And the ballots for the Louisiana and Missouri River Railway Company shall be "For subscribing $50,000 to the Louisiana & Missouri River Railway Company," or "Against subscribing $50,000 to the Louisiana & Missouri River Railway Company."

SECTION 4. If, in the counting of the votes and the certificates of the judges of election on the several propositions named in the first and second sections of this ordinance, it shall be found from such certificates that a majority of all the legal votes cast at said election shall be in favor of either of said propositions, then it shall and may be lawful for the mayor to subscribe, in the name of the city, for such stock in each of said roads as shall have received the legal majority aforesaid, and such amount, not exceeding $50,000, as the council shall determine by vote to instruct the mayor, after ascertaining the result of the vote at said election

SECTION 5. If the election held under the provisions of this ordinance shall be in favor of both the propositions named, then it shall be and may be lawful for the city council to instruct the mayor what amount shall be subscribed to each of said railroads, the aggregate amount of

operation March 19th, 1866 (see Session Acts of 1865–6, p. 70), and not on the 1st of August, 1866, as maintained by the counsel on the other side.

See General Statutes of Missouri, p. 882, sec. I, under the title of

"*The General Statutes and their Effect, and the Editing and Publication thereof.*"

The second section of which provides as follows:

"§ 2. The general statutes aforesaid shall take effect and go into operation from and after the first day of August, 1866, except such parts thereof, as to which a different provision is expressly made therein." * * *

The 17th section of this general railroad law, which, as we have shown, went into effect March 19, 1866, because it is so specially provided in the statute itself, declares that cities may subscribe for stock in, or loan their credit to railroad companies; *provided*, two-thirds of the qualified voters shall assent thereto — of course, if two-thirds do not assent thereto, the authority does not exist.

But here we are referred again to the Macon County case:

In that case, State *ex rel.* v. Macon County, 41 Mo. p. 460, there was a provision in the charter of the company which authorized the subscription to the stock of the company by the county of Macon. The court says: "There is nothing irreconcilable between a general prohibition to subscribe for stock in a corporation and a permission to subscribe for stock in a particular corporation.

In the case before the court, there was not in the charter of the City of Louisiana any authority to subscribe for stock in any particular corporation, or to issue bonds in pay-

ment thereof; it was a general power to subscribe for stock in any railway company connecting with the City of Louisiana. It was a general power, and no railroad company could claim that it was a part of its franchise, or that it entered into the contract between the State and the railroad corporation; but if it did, it was repealable, and the General Assembly of Missouri, at its revising session of 1866, and before any vote was taken, or any ordinance passed by the authorities of the City of Louisiana, in the 6th section of the statute above referred to, entitled:

"*Of the General Statutes, and their effect, and the editing and publication thereof*," provides as follows:

"SEC. 6. All acts and parts of acts of a private, local or temporary nature, or specifically applicable to particular cities or counties in force on the first day of November, A. D. 1865, not repealed by or repugnant to the provisions of the general statutes, or some act of the present General Assembly, shall continue in force, or expire according to their respective provisions or limitations."

This section seems to have been intended specially to set at rest any questions that might arise as to the effect of the General Statutes upon "acts of a *private*, local or temporary nature, or specifically applicable to particular cities or counties," in force on the 1st of November, 1865, and if they were not repugnant to the provisions of the General Statutes, or some act of the present General Assembly, they should continue in force. It is impossible not to say that a proviso requiring two-thirds of the voters is not repugnant to a proviso requiring only a majority of the same voters, or *vice versa*.

The doctrine that there is nothing irreconcilable between a general prohibition to subscribe for stock in a corporation and a permission to subscribe for stock in a particular cor-

poration, is doubtless founded upon the same principle that a general statute inconsistent or repugnant in its provisions to a special statute or a particular privilege, does not repeal the special statute or the particular privilege. But that rule so far as it might be applicable to statutes "*particularly applicable to particular cities or counties*," is clearly repudiated by the 6th section above referred to. The fair reading of the section is: that all acts of a private or local nature, or specifically applicable to particular cities or towns, repugnant to the provisions of the general statutes, or some act of the present General Assembly, are repealed, but those not so repugnant are continued in force. The argument on the other side is that, inasmuch as there are no negative words of repeal, and as one act is special and applicable to a particular city, there is no repugnance because the act which applies to a particular city may be considered an exception to the rule laid down in the general statutes, and the case of Vastine v. The Probate Judge of St. Louis, 38 Mo. 329, is relied upon in support of this view; but in that case the special statute providing for the election of Public Administrator, passed in 1857, was in conflict with the provisions of the general law of 1855, which general law remained in force in regard to all other counties but St. Louis, and therefore, the special act was an exception; and when the general statutes of 1865, 1866, were adopted retaining the same provision as the general statute of 1855, it was not held to alter the exception or to change the law: but no such facts exist in this case; the provisions of the special charter of the City of Louisiana of Feb. 1865, was not in conflict with any existing law; no action had been taken under it; no rights had accrued to any one by virtue of its provisions; it was in conflict with the policy of the State as expressed in the constitution adopted immediately after its enactment; it referred to the powers of a municipal corporation; it was "particularly

applicable to a particular city," and was clearly inconsistent with the provision of the general law, authorizing cities to subscribe for stock of a railroad company provided two-thirds of the qualified voters should assent to it. It is different from the Macon County case, because there the power given to the County Court to subscribe for stock was incorporated in the Charter and became a franchise of the company.

3. But it is claimed that as a matter of fact two-thirds of those who voted on the proposition voted in favor of it, and that this satisfies the requirements of the constitution and the law; and in support of this view we are referred to the case of Johnson v. Cass County, 95 U. S. 368.

In that case the election was held and the notice given under the provisions of what is called the Township Act, which, by its terms, required two-thirds of those voting to make the subscription and issue the bonds, whereas the city charter required only a majority of those voting. In one case the voters are notified that a two-thirds vote is required; in the other that a majority vote will be sufficient. In the Cass County case the court holds that two-thirds of those voting means two-thirds of the qualified voters, and that the presumption is that those who absented themselves from the polls assented to the action of those who voted. But in this case no such presumption can arise, because the voters were not notified that a two-thirds vote was required. The only fair presumption in this case would be that those who absented themselves assented to the action of a majority, under the mistaken idea that a majority vote was sufficient. But if we admit that a majority vote was not sufficient, it was a fraud upon the rights of those who absented themselves from the polls upon the idea that a majority vote was sufficient. More than one-third of the voters might say, we can defeat a two-thirds vote, but as

only a bare majority is required, and as we cannot defeat a bare majority, there is no use in voting at all. So that, in this case, two-thirds of those who actually voted cannot be held to be two-thirds of the qualified voters.

In the case of Johnson v. Cass County, 95 U. S. 368, the court assents to and re-affirms the doctrine laid down in the case of St. Joseph Township v. Rogers, 16 Wall. 644, viz.: that a majority of the legal voters was intended to mean a majority of the legal voters voting at an election (where a majority only was required), notified and held to ascertain whether the proposition to subscribe should be accepted or rejected, and that all qualified voters who absent themselves from an election duly called are presumed to assent to the will of a majority of those voting.

See also State v. Mayor of St. Joseph, 37 Mo. 270, where it is held that where two-thirds of the qualified voters, voting at an election authorized for the express purpose of determining that question, on *public notice* duly given, voted in favor of the proposition, it is sufficient.

In other words, that where the law requires two-thirds of the qualified voters, and an election is held in pursuance of such a law and under notice duly given, two-thirds of those voting will be held to be two-thirds of the qualified voters. And so, when the law in force requires a majority of the qualified voters, a majority of those voting will be sufficient. But where the law requires two-thirds, and the case is submitted for a majority vote, two-thirds of those voting cannot be held to be two-thirds of the qualified voters.

An illegal election determines nothing, no matter what the result may be.

But, it may be claimed that on the authority of the

Clark County case, 54 Mo., if the power existed under the general law, that was sufficient.

In the Clark County case Judge Napton says (see Smith v. Clark County, 54 Mo., p. 58):

"If it can be shown that the power existed, a false recital of it, however obligatory on the county or its agents, would not defeat its efficacy in the hands of a party nowise concerned in the perpetration of the falsehood."

In that case the General Statute of 1855 gave the general authority to subscribe, as well as the special act of 1857 (the Railroad Charter). In neither case was a vote required. The authority came direct from the statute. But in this case, whether the authority be claimed under the General Statute of 1866, or under the city charter, a vote was required—in one case a majority, in the other a two-third vote; a vote was the basis of authority in either case, and the voters were not notified that a two-third vote was required; and the vote, therefore, was not cast upon the idea that it required two-thirds, so that two-thirds of those actually voting cannot be held to be two-thirds of the qualified voters. It must be shown that they were actually two-thirds of the qualified voters.

JAMES O. BROADHEAD and
DAVID P. DYER,
Counsel for Plaintiff in Error.

OFFICE SUPREME COURT U.S.
FILED
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JAMES H. McKE[illegible]

IN THE

Supreme Court of the United States

THE CITY OF LOUISIANA,
Plaintiff in Error,
vs.
ELIZABETH W. TAYLOR,
Defendant in Error.
} *No. 264.*

STATEMENT AND BRIEF FOR DEFENDANT IN ERROR.

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IN THE

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THE CITY OF LOUISIANA,
Plaintiff in Error,
vs.
ELIZABETH W. TAYLOR,
Defendant in Error.

STATEMENT AND BRIEF FOR DEFENDANT IN ERROR.

This is a suit upon bonds and coupons issued by the City of Louisiana to aid in the construction of the Louisiana and Missouri River Railroad.

The point in controversy is the power of the city to issue the bonds.

These bonds were issued to the amount of forty-eight thousand dollars, and bear date November 1, 1869. The evidence preserved in the record shows that the city issued the bonds at that time, paid the interest thereon to July, 1876, and has, in fact, since paid a portion of the bonds themselves. The principal and past-due interest on the bonds now outstanding and represented by the coupons and past-due bonds on this suit now amount to about fifty-

eight thousand dollars. The railroad in aid of which the bonds were issued was in all respects completed, and is now in active operation, forming a part of the through-line of the Chicago & Alton Railroad between St. Louis and Kansas City, one of the most flourishing and important through-lines in the West. The bonds were only issued as the work on the road progressed. The city received its stock in the road, and in fact has since sold it for a handsome sum. The city received full and ample consideration for the bonds, both in the stock it received and the advantages it derived from the completion and successful operation of the road. No more unjustifiable case of repudiation of an honest debt has ever taken place in the history of such dishonest acts. We believe in truth the defence has never been a serious one, but only that of delay and annoyance.

This case was first commenced in the court below to the September term, 1877, and the petition then claimed that the bonds were issued under authority derived from the charter of the Louisiana and Missouri River Railroad Company, and city ordinance number 502, as the bonds recited on their face. The defendant demurred to that petition on various grounds, and the court, by Mr. Justice Miller, sustained the demurrer on the ground that the charter of the railroad company, while it authorized counties to subscribe to its stock and *issue bonds* in payment therefor, it only authorized cities to subscribe, but did not authorize the issue of bonds in payment for the subscription. That omission exists in the act.

The defendant then filed an amended petition, claiming in substance that there was authority to issue said bonds under the railroad charter aforesaid, and under an amendment to the city charter of Louisiana, approved February 16, 1865, which was as follows: —

"The city shall have power to subscribe for stock in any

incorporated railway company connecting with the city of Louisiana, or give a bonus to any institution of learning, by submitting an ordinance making the appropriation, or authorizing the issue of bonds for any such purpose, to a vote of the qualified voters of the city, at any general election held in the city, or at any special election expressly ordered, at which election the majority of the votes cast shall be for such ordinance; *provided*, the debt of the city shall never exceed one hundred and fifty thousand dollars."

This was an amendment to the charter passed February 16, 1865. [Session Acts 1864–5, p. 422.]

The plaintiff claimed further that under the authority aforesaid, Ordinance No. 502 was passed by the city of Louisiana, authorizing a vote of the qualified voters of said city as to whether said city should subscribe fifty thousand dollars to the capital stock of said Railroad Company, and issue its bonds in payment therefor; that said vote was taken resulting in its favor. That thereafter the subscription was made, the bonds issued, etc.

The defendant then answered, setting up that there was no authority to issue the bonds under either of said acts, and various defects in the election proceedings.

A demurrer to these defences, as to want of authority to issue the bonds under the city charter, was sustained by Circuit Judge Dillon.

A trial was then had before Judge Treat, at which the plaintiff proved the passage of Ordinance 502, authorizing the election. That the result of the election was one hundred and seventy-six votes for the subscription, and forty-six votes against the same; that the city passed Ordinance No. 521, completing the subscription; that it was duly made thereafter; that the stock was issued and received by the city, which she held at the time of the trial and had always voted at the election in the Railroad Company; that the

bonds were issued and interest paid thereon by taxation until July, 1876.

The plaintiff obtained a judgment, and the question is now before this court.

The various acts which may be considered in this case are as follows:

The Louisiana and Missouri River Railroad Company was chartered by a special act of the General Assembly, approved March 10, 1859.

Section 29 of said act is as follows: —

"It shall be lawful for the County Court of any county in which any part of the route of said railroad may be, to subscribe to the stock of said company; and it may invest its funds in stock of said company, and issue the bonds of such county to raise funds to pay the stock thus subscribed, and to take proper steps to protect the interest and credit of the county. Such County Court may appoint an agent to represent the county, vote for it, and receive its dividends; and any city, town, or incorporated company may subscribe to the stock of said railroad company, and appoint an agent to represent its interest, give its vote, and receive its dividends, and may take proper steps to guard and protect the interest of said city, town, or incorporation."

[Session Acts 1859, p. 400.]

The provision of the city Charter of Louisiana was as follows:

"The city shall have power to subscribe for stock in any incorporated railway company connecting with the City of Louisiana, or give a bonus to any institution of learning, by submitting an ordinance making the appropriation, or authorizing the issue of bonds for any such purpose, to a vote of the qualified voters of the city, at any general election

held in the city, or at any special election expressly ordered, at which election the majority of the votes cast shall be for such ordinance; *provided*, the debt of the city shall never exceed one hundred and fifty thousand dollars."

This was an amendment to the charter passed February 16, 1865. [Session Acts 1864–5, p. 422.]

The Constitution of Missouri of 1865 went into effect July 4, 1865.

The prohibitory clause thereof, as to the issue of bonds, is as follows:

ART. 11, Sect. 14. "The General Assembly shall not authorize any county, city, or town to become a stockholder in or loan its credit to any company, association or corporation, unless two-thirds of the qualified voters of such county, city, or town, at a regular or special election, to be held therein, shall assent thereto."

March 19, 1866, the Legislature of Missouri passed a general corporation law, including general provisions as to railroad corporations, sect. 17 of which was as follows:

[Session Laws 1865, p. 33, Sec. 17.]

"It shall be lawful for the County Court of any county, "the city council of any city, or the trustees of any incor- "porated town, to take stock for such county, city or town "in, or loan the credit thereof to any railroad company "duly organized under this or any other law of the State; "*provided*, that two-thirds of the qualified voters of such "county, city or town, at a regular or special election, to "be held therein, shall assent to such subscription."

This section was also embodied in the revision of 1865, which went into effect August 1, 1866. (Gen. Stat. of Mo. 1865, p. 338, sect. 17.)

So, it has been held that there is no irreconcilability between a general statute requiring all municipalities, before subscribing to any corporation, to obtain the sanction of a popular vote, and a special statute permitting any municipality to subscribe to the stock of a particular corporation without such vote.

State ex rel. *v.* Macon Co. Ct., 41 Mo. 453;
Smith v. Clark Co., 54 Mo. 69.

It is but stating the converse of this latter proposition to say that a special statute, permitting a particular municipality to subscribe to the stock of any corporation without a vote, is not inconsistent with such a general statute.

In other words, if the general statute requires a two-thirds vote, and the special statute, for the cases covered by it, dispensed with any vote, there is no such inconsistency as will work a repeal by implication. Suppose, then, that the special statute, instead of entirely dispensing with a vote, required one to be taken and a majority to be obtained, would there be any inconsistency?

This is the very case before the court.

Again, there are no negative words used in section 17.

It is a well settled canon of construction in Missouri, that "a later statute, which is general and affirmative, does not abrogate a former, which is particular, without negative words are used, or unless the two acts are irreconcilably inconsistent."

State ex rel. *v.* The Probate Judge, 38 Mo. 529, 534;
Deters *v.* Renick, 37 Mo. 597;
St. Louis *v.* Insurance Co., 47 Mo. 146;
Smith *v.* Clark Co. 54 Mo. 69.

"The settled rule of construction is that, if by any fair

interpretation all the sections can stand together, then there is no repeal by implication."

McVey *v.* McVey, 51 Mo. 520.

"To repeal a statute by implication, there must be such a positive repugnance between the provisions of the new law and the old one, that they cannot stand together or be consistently reconciled. There should be a manifest and total repugnance in the provisions of the new law, to lead to the conclusion that the latter abrogated or was designed to abrogate the former."

Pacific R. R. Co. *v.* Cass Co., 53 Mo. 28;
State ex rel. *v.* Severance, 55 Mo. 386;
State *v.* DeBar, 58 Mo., 395, 398 and 399;
St. Louis *v.* Life Ass., 55 Mo. 468.

There is clearly no such irreconcilable inconsistency between the two sections under discussion as must lead, under the foregoing rules, to the repeal of the earlier. Let the charter provision be held to apply to the city of Louisiana, and the general law to the rest of the State, and the inconsistency is reconciled and the whole difficulty settled.

The construction of the Constitution of the State of Missouri of 1865, and the general laws thereunder in relation to powers to subscribe stock to railroad corporations, under special acts in existence prior thereto as construed by its Supreme Court in cases before cited, has been repeatedly followed by this court.

County of Callaway *v.* Foster, 93 U. S. 570;
County of Scotland *v.* Thomas, 94 U. S. 682;
County of Henry *v.* Nicolay, 95 U. S. 619;
County of Ray *v.* Vansycle, 96 U. S. 675;
County of Schylyer *v.* Thomas, 98 U. S. 169;
County of Cass *v.* Gillett, 100 U. S. 585.

To review these cases in detail would seem an unnecessary labor, as they have been so often considered by this court.

This section of the charter of Louisiana was approved February 16, 1865, and fully authorized the issue of the bonds. It is now urged that this section has been repealed or annulled by the clause in the Constitution of 1865, which is prohibitory as to the issue of bonds for railroad purposes, without a two-thirds vote of the qualified voters, and the clause in the general railroad law of that year, authorizing any county or city to subscribe in aid of railroad enterprises upon such a vote.

They insist that as the subscription was not made until after the Constitution and acts aforesaid went into effect, there was no authority to make it.

The Supreme Court of Missouri distinctly decided in the case of The State ex rel. *v.* Macon County Court, 41 Mo. 453, that neither the Constitution of 1865 or the railroad law aforesaid, had any retroactive effect upon laws then in existence; that such was not the object of the legislation. This was an original proceeding for the issue of bonds, and no question of the rights of an innocent holder supported the decision. Following that decision bonds have been declared valid to the amount of many millions of dollars. In that case the court reviews the decisions in the former cases in Missouri, and clearly maintains from them that a general law does not repeal a pre-existing special law, unless specially repealed, negative words are used, or they are irreconcilably inconsistent. It distinctly holds that the special acts of Missouri authorizing subscription to railroads were not inconsistent with the Constitution or the new provision of the railroad law. The ground upon which it is put is, that these provisions were intended to apply to the future, and not to the past. As page 460, Judge Wagner expressly declares that this is the ground of the decision.

"Besides, the 17th section of the general railroad law, "with which the enabling act is supposed to conflict, uses "no negative words. It uses words to express and permit "future acts, and there is nothing to show that it intended "to operate on *existing or past laws* by implication. It "was framed after the constitution was adopted; and the "conclusion is undeniable that it was intended simply to "make the law conform to, and *carry out*, the 14th section "of the 11th article of that instrument."

What language can be more positive and explicit. The court construes this section as applying to future acts, and that it was not intended to apply to past laws, or in any way affect them. This is the exact section of the statute which is now claimed is inconsistent with the section of the city charter under which these bonds were issued. This act was passed after the constitution was framed and known to the Legislature, and was to carry it into effect when it went into operation July 4th of that year. This amendment to the city charter of Louisiana was enacted Feb. 16, 1865, and it would be inconceivable that the same body should intend, by implication, to repeal an act it had just passed. It is manifest that the city of Louisiana was before this Legislature to obtain this special privilege, for the very purpose of assisting to build this railroad. It obtained the privilege, and it did not intend to give it up, nor did the Legislature propose to take it away at the same time. The legislative intention is much more manifest not to take away the special privilege, than in the case of acts passed long before, which have been so often sustained.

This case was followed by the case of the Kansas City, etc., R. Co. *v.* Nodaway County, which was also a direct proceeding to compel the issue of the bonds, and where the whole subject was again gone over and the same views held as to the repealing effect of the constitution on this act;

and in the case of Smith *v.* Clark County, 54 Mo. 69, it is reviewed and maintained in a carefully considered case.

These cases have been repeatedly followed by this court in the cases before cited, construing the constitution of Missouri and section 17 of the railroad act aforesaid. In the opinion of the court the Constitution is referred to, but the statute has always been before this court. See the case of the county of Ray *v.* Vansycle, 96 U. S. 675, at p. 682, where the act is set out in full.

It is claimed that there is a difference between a provision in a city charter and a special privilege granted in a railroad charter. This is merely nominal. The provision in the city charter is a special law granting a special privilege the same as in a railroad charter. The ground upon which these decisions rest is that a general law does not repeal a special law unless they cannot be reconciled. How can it be claimed that a law granting all municipal corporations authority to do certain things in a particular way is inconsistent with authority formerly granted to one corporation to do something of the same kind in another way.

This statute contains no negative words at all, but on the contrary extends the power of cities to issue bonds, and was for that purpose. None of the cases which sustained these acts of the Legislature passed prior to the constitution and the railroad law of 1865, have put it as the ground upon which it was done — that this was a vested right in the Railroad Company. The sole ground of it was that the former law was not repealed by implication, and the latter had no retroactive effect. In those cases in which the rights under these charters had been transferred to other corporations it was held that this was a vested right of the company, and could be transferred, and this was all.

This general clause requiring a two-thirds vote would be inconsistent with a general law requiring a majority vote, but not with a special law for a particular locality.

But the case of State ex rel. of Vastine *v.* Probate Judge,

38 Mo. 529, shows conclusively that that court did not put its decision on the ground of any vested right in a railroad corporation. In that case the legislature had made a special law for St. Louis County, requiring the public administrator to be elected by the people. The legislature passed a general law allowing them to be appointed in all the counties in the State. The Supreme Court decided in that case that the special law was not repealed by the general law. It was not on the ground that the claimant had been elected before the repeal, but solely that the special law was not inconsistent with the general law. This special law was not for the benefit of any person or corporation. It was applicable to a county. It in no respect differs from the law which is now before this court, for it was a special law applicable to particular localities, not connected with any private corporation or individual. The court directly held that the general law did not repeal the special law applicable to a particular locality, because they were not inconsistent.

It is contended that sect. 6, page 883 of the Gen. Stat. of 1865, that went into effect August 1, 1866, and is a part of the act putting in force these statutes, repeals this section of the Louisiana charter. If it does, it certainly repeals the clauses of the railroad charters, for if this clause repeals laws applicable to particular cities and counties, it repeals those of a "private, local or temporary nature," for it applies equally to both. It has never been contended before that this section had any such effect. It really has no effect upon these acts, of any kind, except to show that the legislature did not intend to repeal any of them. It leaves the subject, putting it in its strongest form, against us, where it would have been without it. If they are repugnant, they cannot stand, otherwise they must remain; and it comes to the same point, are they in fact repugnant or irreconcilable? The courts have held not, and all sound judgment must be with this principle.

This is set at rest, however, by the case before referred to, State ex rel. of Vostine *v.* Probate Judge, *supra*, both in the case itself and the construction put upon it by the same court in the case of State ex rel. *v.* Macon County, *supra*, and subsequent cases. In that case the question of the effect of sect. 6 upon a special law applicable to a particular locality came distinctly before the court. That was the exact claim made by the appointee of the Probate Judge, and the court held that such was not the purpose of the statute, on the sole ground that they were not inconsistent. It is true that the special act was inconsistent with the former general law, but that was not the ground of the decision. It was alluded to in the opinion as a circumstance showing the intention of the Legislature; but this was not the ground of the decision, but it was that "a later statute, which is general and affirmative, does not abrogate a former, which is particular, without negative words are used, or unless the two acts are irreconcilably inconsistent." It is true that there was no general law in force authorizing a subscription on two-thirds vote upon the amendment to the city charter, passed February 16, 1865, but the same Legislature passed such a law March 19 following year, and so far as the question of their attention being called to what they were really doing, the facts are much more definite and pointed in this case than in the other. But this case was construed and commented upon by the court in the case of The State ex rel., etc., *v.* Macon County, *supra*, where the court said that the former case passed directly upon the effect of sect. 6 upon local acts. At page 461 it says: —

"It was contended (in the Vastine case) that sect. 6 of "Ch. 224 of Gen. Stat. necessarily repealed the special "law and vested the exclusive power of appointment in the "court having probate jurisdiction; *but we decided that* "*as no negative words were used, there was no such incon-*"*sistency as would produce a repeal by implication and*

"*prevent both laws from standing together.*" Thus the Supreme Court of Missouri has not only decided that sect. 6 now relied upon did not repeal local acts, but has construed its own opinion adversely to the claim now made.

We must conclude that all the questions raised by the Constitution of 1865, the general railroad law of 1866, and of sect. 6 aforesaid, in their effect upon railroad charters, and local acts applicable to particular places, have long been settled by the Supreme Court of Missouri, the Federal courts of the same State, and the Supreme Court of the United States.

II.

Even if the charter provision was repealed, and the general law in force, still the bonds are valid; for the record shows that more than two-thirds of the qualified voters voted for the subscription.

It is of no consequence that plaintiff, in her petition, does not rely upon the general law as authorizing their issue.

Smith *v.* Clark Co., 54 Mo. 71;
Chouteau *v.* Allen, 72 Mo. 290, 326.

They claim that the clause of the city charter was repealed by the clause in the general railroad law which went into effect March 19th, 1866. The ordinance authorizing the election for this subscription was passed June 17th, 1866, and the election was held July 3, 1866, both after this act went into effect. If it repealed the section of the city charter it was itself in force. The question submitted was, "For subscribing $50,000 to the Louisiana and Missouri Railroad Company," and against it. The vote was 176 for the proposition and 46 against it, considerably more than a two-thirds majority in it favor. (Record, p. 14.) This fully complies with the law as they claim it then existed.

It is sufficient if the power existed.

Commissioners *v.* U. S., 94 U. S. 202;
County of Cross *v.* Johnston, 95 U. S. 360;
State *v.* Mayor of St. Joseph, 37 Mo. 270;
State *v.* Birder, 38 Mo. 420.

It is contended that the question was not properly submitted under this law, because the ordinance provided that it should be considered carried if only a majority voted for it. The act only required that the submission should be made at a general or special election. It did not require an Ordinance to be passed in compliance with the law, or any Ordinance at all. This would only be an irregularity which has been repeatedly held of no consequence after the bonds have been issued, and in the hands of an innocent holder. The power existed; it was complied with; the authorities so decided by the issue of the bonds, and after the payment of interest for several years, holding, voting and selling the stock, they are estopped from setting up their own mistakes and informalities in their own defence.

III.

But it is quite immaterrial whether section 10 of the city charter was repealed by section 17 of the general law or not. The city had ample power, under section 29 of the company charter, to make the subscription and issue the bonds.

That section 29 was not repealed by section 17 is settled by all the authorities.

State ex rel. *v.* Macon Co. Ct., 41 Mo. 453;
Smith *v.* Clark Co., 54 Mo. 58;
Callaway Co. *v.* Foster, 93 U. S. 567.

Neither was it repealed by section 10 of the city charter. That section was for the city a law regulating railroad subscriptions in general. There is no purpose indicated of withdrawing or modifying any existing special powers. The railroad charter amounts to a special permission to this city to subscribe to this company. This power was unaffected. There are no negative words in the city charter.

St. Louis *v.* Alexander, 23 Mo., 483;
State *v.* McDonald, 38 Mo., 533;
Supervisors *v.* Lackawanna Iron, etc., Co., 93 U. S., 619.

NOTE. — That, in the case at bar, the railroad charter is more special in its character than that discussed in *93 U. S.*, in this, that Louisiana is expressly named as a point on the proposed road, while Wood County was not.

The railroad charter gave the power of issuing bonds to pay such subscription as the city might make.

a. The whole section (§ 29) must be read together. The power given to cities to subscribe for stock was undoubtedly intended to be subject to the same restrictions and to have the same adjuncts as that given to counties.

Cities off the route of the road could not subscribe any more than counties whose territory was not crossed.

Cities subscribing could issue bonds the same as counties. This is the natural construction to give the language used. *Qui haeret in litera, haeret in cortice.*

b. There is no requirement that subscriptions should be paid in cash. In the absence of such requirement, they may be paid in the common, accepted and almost only known way, *i.e.:* by the issue of negotiable bonds.

Curtis *v.* County of Butler, 24 How. 448;
Bushnell *v.* Beloit, 10 Wis., 230.

c. When power is given to a municipal corporation to subscribe to the stock of a railroad company, the implied power to issue negotiable securities in payment, follows as a necessary incident.

Seybert *v.* Pittsburgh, 1 Wall. 272;
The Commonwealth *v.* Pittsburgh, 41 Pa. St. 283;
Kelly *v.* The Mayor, 4 Hill, 263;
Ketchum *v.* Buffalo, 14 N. Y. 366;
Douglass *v.* Virginia City, 5 Nev. 147;
Police Jury *v.* Britton, 15 Wall. 572;
Mayor *v.* Ray, 19 Wall. 477;
Dillon Munic. Corp., sects. 82, 83, 407;
Great Falls Bk. *v.* Farmington, 41 N. H. 32.

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